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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket ID-OSHA-2007-0066]

RIN 1218-AC86

Cranes and Derricks in Construction: Operator Certification

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is extending its November 10, 2014, deadline for employers to ensure that crane operators are certified by three years, until November 10, 2017. OSHA is also extending its employer duty to ensure that crane operators are competent to operate a crane safely for the same three-year period.

DATES: This final rule will become effective November 9, 2014.

ADDRESSES: In accordance with 28 U.S.C. 2112(a)(2), the Agency designates Ann Rosenthal, Acting Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, to receive petitions for review of the final rule.

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Copies of this Federal Register notice and news releases: Electronic copies of these documents are available at OSHA's Web page at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

OSHA is publishing this final rule to extend for three years the employer duty to ensure crane operator competency for construction work, from November 10, 2014, to November 10, 2017. OSHA also is extending the enforcement date for crane operator certification for three years from November 10, 2014, to November 10, 2017. After publishing the final rule for cranes and derricks in construction, several entities informed OSHA that crane operator certification was insufficient for determining whether an operator could operate their equipment safely on a construction site. After hosting several public meetings addressing this issue, OSHA decided the extension is necessary in order to allow the Agency to examine and determine how to address this issue systematically.

B. Summary of Economic Impact

This final rule is not economically significant. OSHA is revising 29 CFR 1926.1427(k) (competency assessment and training) to extend the deadline for compliance with the operator-certification requirement in its construction standard for cranes and derricks for three years, and to extend the existing employer duties for the same period. OSHA's final economic analysis shows that extending the date for operator certification and employers' assessment of crane operators, rather than following the current rule, will result in a net cost savings for the affected industries. Extending the compliance date for operator certification results in estimated cost savings that exceed the estimated new costs for employers to continue to assess crane operators to ensure their competent operation of the equipment in accordance with 1926.1427(k). The detailed final economic analysis is in the "Agency Determinations" section of this preamble.

C. Regulatory Background

1. Operator Certification Options

On August 9, 2010, OSHA published the final rule for cranes and derricks in construction (29 CFR subpart CC, referred to as "the cranes standard" hereafter) (75 FR 47905). OSHA developed the cranes standard through a negotiated rulemaking process. The Agency established a federal advisory committee, the Cranes and Derricks Negotiated Rulemaking Advisory Committee (C-DAC), to develop a draft proposed rule. C-DAC met in 2003 and 2004 and developed a draft proposed rule that it provided to OSHA. The rule that OSHA subsequently proposed closely followed C-DAC's draft proposal (73 FR 59718).

The Agency initiated a Small Business Advocacy Review Panel in 2006. The Agency published the proposed rule for cranes in construction in 2008, received public comment on the proposal, and conducted a public hearing. OSHA's final rule incorporated, with minor changes, the four-option scheme C-DAC recommended and the Agency proposed. Accordingly, in §1926.1427, OSHA requires employers to ensure that their crane operators are certified under at least one of four options by November 10, 2014. The four options are:

Option 1. Certification by an independent testing organization

accredited by a nationally recognized accrediting organization;

Option 2. Qualification by an employer's independently audited program;

Option 3. Qualification by the U.S. military; or

Option 4. Compliance with qualifying state or local licensing requirements.

The third-party certification option in §1926.1427(b)—Option 1—is the only certification option that is “portable,” meaning that any employer who employs an operator may rely on that operator's certification as evidence of compliance with the cranes standard's operator certification requirement. This certification option also is the only one that is available to all employers; it is the option that OSHA, and the parties that participated in the rulemaking, believed would be the one most widely used. In this regard, OSHA is not aware of an audited employer qualification program among construction industry employers (Option 2), and the cranes

standard limits the U.S. military crane operator certification programs (Option 3) to federal employees of the Department of Defense or the armed services. While state and local governments certify some crane operators (Option 4), the vast majority of operators who become certified do so through Option 1--by third-party testing organizations accredited by a nationally recognized accrediting organization.

Under Option 1, a third party performs testing. Before a testing organization can issue operator certifications, paragraph 1427(b)(1) of the cranes standard provides that a nationally recognized accrediting organization must accredit the testing organizations. To accredit a testing organization, the accrediting agency must determine that the testing organization meets industry-recognized criteria for written testing materials, practical examinations, test administration, grading, facilities and equipment, and personnel. The testing organization must administer written and practical tests that:

- Assess the operator's knowledge and skills regarding subjects specified in the cranes standard;
- provide different levels of certification based on equipment capacity and type;
- have procedures to retest applicants who fail; and
- have testing procedures for recertification.

Paragraph 1427(b)(2) of the cranes standard also specifies that, for the purposes of compliance with the cranes standard, an operator is deemed qualified to operate a particular piece of equipment only if the operator is certified for that type and capacity of equipment or for higher-capacity equipment of that type. It further provides that, if no testing organization offers certification examinations for a particular equipment type and/or capacity, the operator is deemed qualified to operate that equipment if the

operator is certified for the type/capacity of equipment that is most similar to that equipment, and for which a certification examination is available.

2. Overview of §1926.1427(k) (Phase-In Provision)

The final cranes standard replaced provisions in 29 CFR 1926 subpart N--Cranes, Derricks, Hoists, Elevators, and Conveyors, of the construction safety standards. Provisions for employers to ensure that operators of equipment, including cranes, are trained and qualified to safely operate that equipment are available elsewhere in the construction safety standards (see, for example, §1926.20(b)(4) and (f)(2)).

OSHA delayed the effective date of the operator certification requirement for four years, until November 10, 2014 (see §1926.1427(k)(1)). The Agency also wanted to ensure the final cranes standard maintained an employer duty during that four-year “phase-in” period to ensure that crane operators could safely operate equipment (see §1926.1727(k), Phase-in). Thus, pursuant to §1926.1427(k)(2)(i), OSHA required employers to “ensure that operators of equipment covered by this standard are competent to operate the equipment safely.” Under §1926.1427(k)(2)(ii), employers must train and evaluate the operator when the operator “assigned to operate machinery does not have the required knowledge or ability to operate the equipment safely.”

3. Post-Final Rule Developments

After OSHA issued the cranes standard, it continued to receive feedback from members of the regulated community and conducted stakeholder meetings on April 2 and 3, 2013, to give interested members of the public the opportunity to express their views. Participants included construction contractors, labor unions, crane manufacturers, crane rental companies, accredited testing organizations, one of the accrediting bodies, insurance companies, crane operator trainers, and military employers. Detailed notes of participants' comments are available at <http://www.osha.gov/cranes-derricks/stakeholders.html> and OSHA-2013-0024-0001. Various parties informed OSHA that, in their opinion, the operator certification option would not adequately ensure that crane operators could operate their equipment safely at a construction site. They said that a certified operator would need additional training, experience, and evaluation, beyond the training and evaluation required to obtain certification, to ensure that he or she could operate a crane safely.

OSHA also received information that two (of a total of four) accredited testing organizations have been issuing certifications only by "type" of crane, rather than offering different certifications by "type and capacity" of crane, as the cranes standard requires. The two organizations later confirmed this (Tr. p. 109 and 246). As a result, those certifications do not meet the standard's requirements and operators who obtained certifications only from those organizations cannot, under OSHA's cranes standard, operate cranes on construction sites after November 10, 2014. Some stakeholders in the crane industry requested that OSHA remove the capacity requirement.

Most of the participants in the stakeholder meetings expressed the opinion that an operator's certification by an accredited testing organization did not mean that the operator was fully competent or experienced to operate a crane safely on a construction work site. The participants likened operator certification to a new driver's license, or a beginner's permit, to drive a car. Most participants said that the operator's employer should retain the responsibility to ensure that the operator was qualified for the particular crane work assigned. Some participants wanted certification to be, or viewed to be, sufficient to operate a crane safely. Stakeholders noted that operator certification was beneficial in establishing a minimum threshold of operator knowledge and familiarity with cranes.

D. The Proposed Extension of the Operator Certification and Employer Assessment Duties.

The effective dates of the operator certification requirement and the other “phase-in” employer duties are in 29 CFR 1926.1427(k)(1). By a notice of proposed rulemaking (NPRM) published February 10, 2014 (79 FR 7611), OSHA proposed to revise §1926.1427(k)(1) to extend the deadline for operator certification by three years from November 10, 2014, to November 10, 2017, to provide additional time for the Agency to consider potential rulemaking options in light of the information it had gathered since it issued the cranes standard. The Agency also proposed to extend the current employer duties in §1926.1427(k)(2)(i) and (ii) to ensure that there is no reduction in worker protection during this three-year period. OSHA noted that when it included these employer duties in the final cranes standard in 2010, these duties were to be a “phase in” to certification (75 FR 48027). By extending the date as proposed, the requirements would continue to serve that purpose and preserve the status quo.

OSHA asked for comment on the proposal, and it specifically asked for comment on whether the extension of time should be for an indefinite period rather than for three years as proposed. OSHA received 66 comments in response to the NPRM, one requesting a hearing to further discuss the rulemaking. On May 19, 2014, OSHA held an informal public hearing on the rulemaking. OSHA also received 6 additional comments during the post-hearing comment period, which closed June 18, 2014.

II. Summary and explanation of the rule.

Commenters in their written remarks and oral testimony focused on three issues arising from the Agency's proposed changes: 1) whether to extend the date for crane operators to be certified (commenters indicated that the third-party certification option is the only one being used); 2) whether to extend the employer duty to ensure crane operators are competent and safe; and 3) the length of time of an extension (if any). This section examines these issues—in the order above—by first summarizing the comments and then explaining the Agency's decisions and determinations based on the record as a whole.

A. Extension of operator certification deadline

Many commenters supported the Agency's proposed extension of the date for crane operators to have certification in their written comments [ID 0448, 0458-61, 0462, 0464, 0466, 0469, 0471, 0476-9, 0481-3, 0485-8, 0490-4, and 0497], in oral testimony [Tr. pp. 22, 100, 119, 212, 222], and in post-hearing written comments [ID-0531, 0533].¹ Their reasons for supporting the three-year

¹ Exhibits are posted on <http://regulations.gov> and are accessible at OSHA's Docket Office, U.S. Department of Labor, 200 Constitution Avenue NW., Room N2625, Washington, DC 20210; telephone (202) 693-2350. (OSHA's TTY number is (877) 889-5627.) OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., E.T.

extension were several. The most frequently mentioned reason was that while operator certification offered safety benefits, most current certifications lack the required capacity factor and would therefore not comply with the final cranes standard. The commenters concluded that the industry's confusion about the validity of current certifications and the difficulty, or even impossibility, of most construction crane operators getting a valid certification by November, 2014, warrants an extension of the operator certification deadline so that OSHA has additional time to remove the capacity requirement from the rule. The Associated Builders and Contractors, Inc. stated:

Without an extension . . . the construction industry will face a crane operator shortage in the coming years, as there will not be enough time for . . . employers to certify their operators in time. For the industry to continue performing work without disruption, it is crucial for an extension to be granted. [Tr. pp. 174-175].

The general manager of a large crane rental company stated that “[i]t is imperative for the good of the industry & the safety of those men & women working in construction that we get the correct language & understanding of what the certification should actually encompass” [ID-0456]. Another commenter stated: “I support waiting until a realistic, workable solution can be agreed upon because to launch this version of an un-workable, unrealistic requirement due to a deadline is much worse than waiting long enough to

Throughout this document, exhibit numbers from the OSHA-2007-0066 docket are referred to in the form “ID-XXXX” where XXXX are the last four digits of the full document ID number on <http://regulations.gov>. The document ID number for exhibits from other dockets will be listed completely.

Comments from the May 19, 2014, informal public hearing transcript will be designated by “Tr. p.#”. The document ID number for the transcript is OSHA-2007-0066-0521.

get it right. We all have to live with it for years to come” [ID-0466]. Another added “[a]lthough the delay in crane operator certification requirements is not ideal, it is preferable [sic] to having the wrong solutions made into law.” [ID-0467].

Other commenters supported an extension of the certification deadline even if OSHA did not ultimately change the substantive requirements in the standard. One stated that the extension makes “good sense” because “[t]here are thousands of operators nationwide in the positions that will need to be certified once this rule goes into effect, but have for one reason of [sic] another had difficulty getting their certification completed” [ID-0460]. Another commenter also supported the extension on the grounds that the limited availability of certification opportunities in languages other than English remains a barrier for otherwise qualified operators to pass the certification test, noting that at least one of the certification organizations, the National Commission for the Certification of Operators (NCCCO), was experimenting with a pilot program that might make the certification available to more potential operators if OSHA delayed the certification date [ID-0452]. NCCCO acknowledged that it is conducting a pilot program, but suggested that there might not be a high a demand for the program [Tr. pp. 111-112].

The commenter who had requested the hearing initially opposed any extension, but then changed its position at the public hearing to support a limited extension [ID-0495, Tr. p. 58]. In its prehearing comment, the Crane Institute Certification (CIC) argued against any extension because requiring crane operator certification sooner would provide greater construction safety as certification results in better trained and tested operators [ID-0495]. CIC pointed to the safety benefits OSHA identified in support of the 2010 cranes standard and concluded that the Agency’s proposal to delay the deadline for all construction crane operators to be certified would result in greater risk on construction sites using cranes, more accidents, and therefore more injuries and fatalities to construction

employees.² At the hearing, however, CIC supported a limited extension, acknowledging that “a delay of crane operator certification is necessary in order to allow OSHA time to address the clarification of employer responsibility” [Tr. p. 58]. Other hearing participants who did not submit comments to the NPRM agreed with CIC’s new position [Tr. pp. 85, 184-85, 201-202, 262].

The remaining group of commenters submitted pre-hearing comments suggesting that OSHA not extend the operator certification deadline, but did not participate in the public hearing [ID-0433; -0435; -0439-42; -0444; -0446; -0450; -0451; -0453; -0473; -0489]. They cited the safety benefits of the cranes standard—incorrectly attributing all safety benefits of the cranes standard solely to operator certification—and stated that a three-year delay is unnecessary because certification bodies, employers, and crane operators have had four years to prepare for the operator certification requirements to become effective. Several of these objections appeared to be based on arguments that the delay would cause economic inequity for some employers or certification companies [ID-0441; -0442; -0444; -0446] or that the delay would necessarily leave a regulatory gap during which operators would not be subject to any scrutiny [ID-0473, 0489].

One commenter in this group stated that “[m]any current crane operators have a complete lack of knowledge of how to set up, use, and inspect a crane If not for certification, this would continue” [ID -0440]. Another commenter in this group objected on the grounds that the extension will allow employers to go “another” three years “without training and qualifying their crane operators” [ID -0435]. It appears from these statements that the commenters did not understand that existing §1926.1427(k)(2), which OSHA

² Contrary to the assertions by several commenters [ID-0433, 0444, 0453, 0473, 0489, 0495], OSHA did not identify individual components of the standard, but rather calculated the benefits of the entire cranes standard as a whole. OSHA did not separately itemize benefits accruing from the operator certification requirements.

proposed to stay in effect for the entire three-year extension, requires employers to assess their crane operators and re-train them as necessary.

Three commenters apparently equated the certification requirement with a training requirement [ID-0435, -0439; -0451]. One was opposed to the extension because construction work requires “completely trained operators” [ID -0439] and another explained that “people die at construction sites daily because of Crane accidents which probably could have been prevented with proper training” [ID -0451]. However, the certification requirements that OSHA proposed to delay by this rulemaking, appearing in §1926.1427(a)(2) and (f), do not include any specific training requirement. The training provisions are located elsewhere and are not changed by an extension of the operator certification deadline. OSHA proposed to extend the re-training requirement in §1926.1427(k), which was set to expire in November.

A number of commenters addressed in their written comments the issue of certification by “type and capacity” of the crane. However, resolving that issue is outside the scope of this rulemaking, which only addresses whether to extend the deadlines of operator certification and the existing employer duty. As the Agency previously made clear in the notice of proposed rulemaking, it will consider the issue of type and capacity and the role of operator certification as it determines whether to engage in additional rulemaking during the three-year extension and will not alter the requirements about the nature of certification required in this rulemaking.

B. Extension of the existing employer duty

Commenters were nearly unanimous in supporting an extension of the existing employer duty to ensure that their operators are competent to operate cranes: All but one of the comments addressing the extension of that duty supported it. The commenter who did not offer support indicated that he did not have any opinion about the issue, but noted his understanding that “the employer needs to verify an individual’s abilities” [Tr. p. 273]. The International Union of Operating Engineers (IUOE) provided an extensive Power Point presentation highlighting the different skills operators must have, only some of which are tested during operator certification examinations, and the additional challenges operators may face [ID-0527]. IUOE asserted that it is crucial that employers continue to ensure that their operators are capable of meeting these challenges:

An extension of the enforcement date for certification without continuation of employer duties would endanger the safety and health of operators and those employees working in the vicinity of crane operators. OSHA would have no standard for employer assessment of compliance if the k(2)(i) and (ii) are not extended. . . . Crane operators would be in a far worse position than they were before issuance of the final rule in August 2010 if employer duties in k(2)(i) and (ii) are not extended . . . [ID-0486]

William Smith of Nations Builders Insurance Services and NCCCCO board member agreed, commenting that “[l]eaving the rule as written [with certification but without a continued employer duty after November, 2014] would take us back in time not forward in protecting lives” [ID-0474]. The Specialty Crane & Rigging Association stated that “It is the employer’s responsibility to ensure their operators are certified and qualified for any specific crane they will operate” in supporting the extension of time for both

provisions [ID-0493]. Testimony during the public hearing on May 19, 2014 also supported continuing the employer duty to qualify crane operators [Tr. pp. 29, 134, 217]. The IUOE stated:

The one thing we wanted to be very clear on is that if you extend the date of enforcement for certification, that without extending the other [employer duty], there would be essentially nothing there, and there would be no protection at all, except for the people's voluntary compliance with certification. But that would be, obviously, inadequate. [Tr. p. 250]

Larry Hopkins of the Operating Engineers Certification Program added that “it’s absolutely imperative that we put the onus of qualification on a particular employer” [Tr. p 217]. A commenter employed in the crane rental industry for 35 years stated that he would never let an operator control a crane just because he or she has received a third-party certification; rather, an operator would have to demonstrate competence on various cranes to the employer [ID-0456]. Boh Bros. Construction Co. commented that “a certification is only an indication of basic skills Certification is good, but does not equal qualification” [ID-0464]. These comments to the proposal echo the information the Agency heard at its stakeholder meetings in April, 2013 [OSHA-2013-0024-0001]. While not prejudging the issue of whether employers should still have a duty to assess operators even once a certification requirement takes effect (a subject the Agency will consider during this extension), OSHA notes that these comments also support a requirement that the employer duty be maintained before the certification requirement takes effect.

C. Conclusions regarding whether the extensions are appropriate

OSHA finds that the stakeholder concerns surrounding operator certification and employer assessment and training warrant a more thorough examination, and OSHA will consider whether to commence a new rulemaking proceeding to make changes to the

operator qualification requirements in §1926.1427. By this final rule, OSHA is extending the operator certification deadline to allow the Agency time to make this decision and complete a subsequent rulemaking if necessary. OSHA acknowledges the equity concerns raised by businesses and employers who have invested in certification with the expectation of a 2014 deadline [See ID-0441; -0442; -0444; -0446], but notes that the extension will not affect other benefits of certification such as access to restricted employment opportunities [Tr. pp. 149-150] and insurance discounts [Tr. p. 151]. Moreover, OSHA recognizes that it would generate confusion and general disregard for the standard if OSHA began to enforce compliance with the November 2014 deadline at the same time it announced that it was considering changes to the standard. Those concerns would be compounded if OSHA did subsequently change the standard a year or two later so that operators who had just completed the certification process were required to re-certify. OSHA concludes that it is preferable to extend the certification deadline rather than to require employers to devote additional resources to comply with requirements as OSHA considers changing them.

In addition, OSHA has concluded that extending the employer duties in §1926.1472(k)(2) during the certification extension is necessary to ensure there is no reduction in worker protection. While OSHA is not now determining whether it should retain or alter the existing employer duties through a permanent change to the cranes standard, the record provides support for a temporary requirement for employer assessment and training to help ensure that crane operators know how to operate their crane safely [See,

e.g., ID-0474, -0486, -0493, Tr. pp. 29, 134, 217, 250].³ Without an extension of the employer duty, the standard would have no requirement to ensure that crane operators knew how to operate the crane safely during the operator certification extension.⁴

Therefore it is important that the Agency extend the employer duty while it considers rulemaking options. The Agency concludes that it would be inappropriate to disturb the status quo until it completes that examination and has the necessary information to determine whether changes are needed.

As discussed above, other commenters supported the extension because they thought stakeholders needed more time to complete certification [e.g., ID-0460]. OSHA does not find these arguments convincing. While OSHA rejects the argument that intentional lack of compliance with an existing requirement in a standard is by itself grounds for OSHA to delay a compliance date, it is adopting an extension to consider the potential safety consequences of allowing the existing employer duty to expire or the new concerns expressed after the 2010 cranes rulemaking that some of the existing operator certification requirements might be unnecessary and costly.

D. Length of the extensions

³ Several commenters suggested that OSHA should, as part of this rulemaking, make permanent the existing employer duties [ID-0495, 0522; Tr. p. 59-60, 88-89, 185, 208, 262]. OSHA had not proposed to do so in the NPRM; rather, the point of the instant rulemaking is to give the Agency the time it needs to consider whether to do so.

⁴ A commenter suggested in its pre-hearing comment that OSHA could simply remove the employer's existing duty to assess operators and retrain them as necessary, and instead rely on the "general duty clause" in section 5(a)(1) of the OSH Act to enforce those responsibilities [ID-0495]. OSHA decided against this approach because it would give employers less certainty about the specifics of its duty to ensure their crane operators know how to operate cranes safely, and because it would make it more difficult for OSHA to enforce such a duty due to the nature of the Agency's burden of proof. Moreover, a court might find the cranes standard precludes such a general duty case even if OSHA removed the employee training requirement.

Having determined that it is appropriate to extend both the certification deadline and the employer duty to ensure operator competence, the remaining issue is the length of the extensions. In the NPRM, OSHA proposed extending the operator certification deadline and the existing employer duty for three years, until November 10, 2017. As an alternative, the Advisory Committee on Construction Safety and Health (ACCSH) recommended an indefinite extension of the operator certification deadline and the existing employer duty pending further rulemaking on the issue [OSHA 2013-0006-0024]. OSHA requested comment on both the three-year extension and ACCSH's recommendation of an indefinite extension, and invited comment on alternative periods.

One group of commenters proposed an extension of just one year, others supported the proposed three-year extension, one commenter suggested a five-year extension, and three commenters indicated their support for the indefinite extension suggested by ACCSH.

The commenters supporting the one-year extension generally urged OSHA to act quickly so as not to unnecessarily delay the safety benefits that could be achieved by completion of the final crane rulemaking [Tr. pp. 58-60, 183-184, 206-207, 264-266]. In addition, the Crane Institute of America called for clarity as soon as possible, warning that “[u]ncertainty over what the requirements of the rule will finally be will retard employer participation in getting operators certified” [ID –0489].

At the informal public hearing, CIC suggested a one-year extension of the operator certification deadline and the existing employer duty as “sufficient time to allow OSHA to make this change to the regulation and to the industry to recover and resume pursuit of accredited operator certification” [Tr. p. 60]. CIC stated that the Agency’s announcement at the May 2013 ACCSH meeting that the Agency intended to propose a delay of the crane operator certification deadline resulted in a decline both in training

and certification activity that had resulted in a year of confusion in the industry” [Tr. p. 66]. Industrial Training International, a training provider, referred to the period of lower activity as “the year we’ve lost” [Tr. p. 209].

CIC suggested that OSHA could complete the rulemaking process in one year if it “fast tracked” the rulemaking, citing OSHA’s activities with respect to diacetyl as an example of this process and of how quickly OSHA can act to address a safety and health concern [Tr. p. 60-62]. Other hearing participants (Crane Training Group, Caldwell Tanks, Industrial Training International, and Crane Industry Services) supported this proposition, and suggested that OSHA could meet this deadline because it has the capacity to “fast track” rulemaking [Tr. p. 82, 185, 201, 262].

OSHA has concluded that it could not complete the necessary tasks in the one year period proposed by CIC, particularly if the Agency does decide to proceed with a second rulemaking and would need to consider and implement all possible rulemaking options. The commenters who suggested OSHA “fast track” rulemaking as the Agency did with the diacetyl rulemaking appear to have been misinformed: OSHA did not complete a rulemaking on diacetyl in one year; indeed the Agency has not yet published an NPRM on this issue. OSHA is not certain what the commenters’ intended by their reference to a “fast track” rulemaking process.

In response to the NPRM, OSHA received many comments supporting the three-year extension of the operator certification deadline and the employer duty [ID-0434, 0449, 0452, 0454-62, 0464, 0466-69, 0472, 0474, 0475-79, 0481, 0482-88, 0490, 0491, 0493, 0496-98; Tr. pp. 22, 22, 100, 119, 210-211, 222]. In the NPRM, OSHA stated that it considered a three-year extension “to give it sufficient time to complete a rulemaking should it choose to do so” [79 FR 7613]. Even if the Agency chose to conduct a subsequent rulemaking, OSHA explained that three years would be enough time because “this issue is critical to construction safety”

and “a subsequent rulemaking would focus on a limited number of discrete issues” [79 FR 7613]. OSHA also notes that several participants in the public hearing, including some of the commenters advocating the one-year extension, cautioned OSHA against setting a deadline that it is not certain it can achieve [Tr. pp. 139, 196-197, 208, 272]. Industrial Training International explained, “when the target is constantly moving, we never hit it” [Tr. p. 208]. Specialized Carriers & Riggers Association added “OSHA knows how long it's going to take, and we would say give yourself adequate time. Don’t limit yourself to a year and then have us all back in the room again next year requesting an extension again” [Tr. p. 139].

A few commenters urged the Agency to delay the operator certification deadline, and extend the existing employer duty, for a longer period such as five years, or to follow the ACCSH’s recommendation that the Agency extend both indefinitely until OSHA completes a new rulemaking on operator certification [see ID -0447; -0471; -0480; -0492; -0494; -0530]. These commenters asserted that three years would be insufficient to complete an additional rulemaking.

NAHB asked OSHA to extend the operator certification deadline and the existing employer duty requirements indefinitely or “at a minimum five years to allow the Agency sufficient time to implement an improved rule” [ID-0480]. Subsequently at the informal public hearing, NAHB explained that it took more than five years to finalize the cranes standard, and acknowledged that its five-year recommendation was somewhat arbitrary because the organization ultimately “split the difference” between an indefinite extension and a three year extension [Tr. p. 53]. It made clear that the underlying purpose of the request for a longer extension was to conduct an extra round of small-business review of the third-party certification requirement, which it continues to oppose, “because we believe that the small businesses really need a second bite at this apple” [Tr. p. 44]. A different commenter opposed this “second

bite at the apple,” suggesting the OSHA should not delay the safety benefits of the rulemaking to consider exemptions that had already been considered and rejected [ID-0539].

OSHA need not resolve this issue for the purposes of this rulemaking, but notes that the scope of the issues it will consider for subsequent rulemaking will be much narrower than the 2010 cranes standard. In that regard, these two rulemakings are not comparable for purposes of determining how long they will take. While five years would give the Agency more time to consider and undertake any rulemaking options, the Agency must balance the rationale for this additional extension against the concerns raised by the other commenters who point out that any unnecessary delay in the operator certification requirement could prevent the Agency from obtaining the full safety benefit of the cranes standard.

As explained in the NPRM, the purpose of the extension is to provide additional time for the Agency to consider its rulemaking options. Should it choose to complete a new rulemaking, the Agency is confident that it can do so within the three-year extension period. OSHA therefore is not convinced that a five-year extension would provide any real benefit; instead, it is likely to constitute an unnecessary delay subject to all of the concerns raised by commenters who requested a shorter period. A three-year extension, rather than a five-year extension, provides a better balance between achieving the full safety benefits of the rule and demonstrating to the industry that addressing this issue is a priority.

OSHA is likewise not persuaded that an indefinite extension would be useful. Several commenters emphasized the need for the Agency to find a solution as soon as possible [Tr. pp. 70, 251], and one commenter opposed an indefinite extension on the grounds that it would remove the motivation necessary for OSHA to complete a subsequent rulemaking quickly [Tr. p. 259]. Moreover, one

commenter [ID -0486] asserted that an indefinite extension would foster complacency among the regulated community, some of whom may erroneously assume that operator certification is not important. The Agency agrees with these comments. Further, one commenter who suggested that extending the operator certification deadline indefinitely would “alleviate confusion regarding the current compliance deadline” [Tr. p. 177]. OSHA disagrees. Failing to specify a compliance deadline for operator certification is likely to result in greater, not less, confusion.

In addition, if OSHA does not designate a fixed period after which the certification requirements would automatically take effect, the Agency may face additional legal challenges to reinstating them. Although a temporary extension is not a reversal of the Agency’s position requiring operator certification, some courts have suggested that indefinitely postponing a rule’s effective date might be tantamount to repealing a rule. See, e.g., Pub. Citizen v. Steed, 733 F.2d 93, 98 (D.C. Cir. 1984). The Agency has already dedicated a significant amount of time and resources to implementing the existing standard, including conducting an extensive negotiated rulemaking process before requiring that employers ensure their crane operators are certified. The Agency therefore finds it prudent to avoid any risk of being forced to proceed as if it had revoked the requirement, which could mean additional expense for the agency and additional delay in finalizing any subsequent rulemaking. See, e.g., N. Carolina Growers' Ass'n, Inc. v. United Farm Workers, 702 F.3d 755, 765 (4th Cir. 2012).

OSHA concludes that a three-year extension of the operator certification deadline and the existing employer duty is the appropriate amount of time to consider what regulatory approach OSHA should take regarding operator qualification. Three years is also enough time to make any potential regulatory changes the Agency ultimately determines are appropriate. In response to the

commenters who urged OSHA to act as quickly as possible and expressed concern that the 3-year delay might be unnecessary, OSHA notes that it is not constrained to using the entire three years to take action on this issue if the Agency can act sooner. OSHA will address the issue of operator qualification as quickly as it can, meaning that the Agency could determine the appropriate regulatory action, if any, and implement it in less than three years. In that case, the Agency could impose an earlier deadline through separate rulemaking.

Therefore OSHA has decided to extend the operator certification deadline for three years, until November 10, 2017, and to extend the employer duty to ensure that crane operators are competent to operate a crane safely for the same three-year period, as it proposed. The Agency received no comment on the text of its proposed revision to §1926.1427(k), and the final rule adopts the provision as proposed.

In the notice of proposed rulemaking, OSHA also noted that a parallel training requirement in §1926.1430(c)(2) reiterates the training requirement in paragraph 1427(k)(2), specifying that the training occur during the four-year transition period. OSHA preliminarily determined that it did not need to amend §1430(c)(2) because it believed that amending § 1427(k)(2) was sufficient to extend the relevant employer training duty for employers. OSHA asked for comment on this issue, and received none. The Agency continues to believe that no amendment of §1430(c)(2) is necessary, and therefore it has not changed that provision in the final rule.

III. Agency Determinations

A. Final Economic Analysis and Regulatory Flexibility Analysis

When it issued the final cranes rule in 2010, OSHA prepared a final economic analysis (FEA) as required by the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 et seq.) and Executive Orders 12866 (58 FR 51735) (Sept. 30, 1993) and 13563 (76 FR 3821 (Jan. 21, 2011)). OSHA also published a Final Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601-612). The preliminary economic analysis (PEA) for this rulemaking relied on some estimates from those earlier documents, and this FEA is based on estimates in the PEA along with public comments and testimony and other documents in the rulemaking record.

Because OSHA estimates that this rule will have a cost savings for employers of \$21.4 million per year for the three years of the extension, this final rule is not economically significant within the meaning of Executive Order 12866, or a major rule under the Unfunded Mandates Reform Act or Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). In addition, this rule complies with Executive Order 13563.

This FEA focuses solely on costs, and not on any changes in safety and benefits resulting from extending the certification deadline and the employer duties under §1427(k)(2). OSHA previously provided its assessment of the benefits of the cranes standard in the FEA of that standard. As noted elsewhere in this preamble, the primary rationale for proposing the extension is to provide additional time for OSHA to consider the potential costs and benefits of possible adjustments to the operator certification requirements in future rulemaking.

Extending the employer's requirement to ensure an operator's competency during this period means continuing measures in existence since publishing the final crane standard in 2010. As OSHA stated in the preamble to the 2010 final rule, the interim

measures in paragraph (k) “are not significantly different from requirements that were effective under subpart N of this part at former §1926.550, §1926.20(b)(4) (‘the employer shall permit only those employees qualified by training or experience to operate equipment and machinery’), and §1926.21(b)(2) (‘the employer shall instruct each employee in the recognition and avoidance of unsafe conditions . . .’)” (75 FR 48027).

Delaying the operator certification requirement defers a regulatory requirement and should impose no new costs on employers. There will, however, be continuing employer costs for extending the requirement to assess operators under existing §1926.1427(k)(2); if OSHA had not extended these requirements, they would have expired in 2014 and employers would not have incurred these costs after 2014. With the extension, these continuing employer costs will be offset by a reduction in expenses that employers would otherwise incur to ensure that their operators are certified before the existing November 2014 deadline.

Overview

In the following analysis, OSHA examined costs and savings to determine the net economic effect of the rule. By comparing the additional assessment costs to the certification cost savings across two scenarios—a scenario in which there is no extension of the 2014 deadline, and a scenario in which there is an extension until 2017—OSHA estimates that the extension will produce a net savings for employers of \$21.7 million per year, annualized over the 3-year period of the extension using a 7% interest rate (\$19.8 million per year using an interest rate of 3%).⁵

⁵As explained in the following discussion, OSHA typically calculates the present value of future costs and benefits using two interest rate assumptions, 7% and 3%, as recommended by OMB Circular A-4 of September 17, 2003.

OSHA's analysis follows the steps below to reach its estimate of an annual net \$21.7 million in savings:

- (1) Estimate the annual assessment costs for employers;
- (2) Estimate the annual certification costs for employers; and
- (3) Estimate the year-by-year cost differential for extending the certification deadline to 2017.⁶

Table 1 below summarizes these costs and the differentials.

a. Annual assessment costs

OSHA estimated the annual assessment costs using the following three steps: first, determine the unit costs of meeting this requirement; second, determine the number of assessments that employers will need to perform in any given year (this determination includes estimating the affected operator pool as a preliminary step); and finally, multiply the unit costs of meeting the requirement by the number of operators who must meet it in any given year to determine the annual costs.

Unit assessment costs. OSHA's unit cost estimates for assessments take into account the time needed for the assessment, along with the wages of both the operator and the specialized operator assessor who will perform the assessment. OSHA based the time requirements on crane operator certification exams currently offered by nationally accredited testing organizations. OSHA

⁶For convenience, OSHA refers to the annual time period as a "Certification Year" (CY) in this economic analysis, which OSHA defines as beginning November 10 of the calendar year; e.g., CY 2013 runs from November 10, 2013, to November 9, 2014. There is some small variation in both assessment and certification costs across CYs due to changes in the composition of the operator pool resulting from turnover (discussed below). In this regard, OSHA presents CY 2013 costs in full, and then presents the minor adjustments needed for other CYs.

determined the time needed for various certification tests from informal conversations with industry sources who participated in the public stakeholder meetings.

The Agency estimates separate assessment costs for three types of affected operators, which together include all affected operators: those who have a certificate that is in compliance with the existing cranes standard; those who have a certificate from a nationally accredited testing organization that is not in compliance with the existing cranes standard; and those who have no certificate.⁷ OSHA uses certification status as a proxy of competence in estimating the amount of assessment time needed for different operators. OSHA expects that an operator already certified to operate equipment of a particular type and capacity will require less assessment time than an operator certified by type but not capacity, who in turn will require less time than an operator who is not certified. In deriving these estimates, OSHA determined that operators who have a certificate that is compliant with the cranes standard would have to complete a test that is the equivalent of the practical part of the standard crane operator test.⁸ The Agency estimates that it would take an operator one hour to complete this test. Operators who have a certificate that is not in compliance with the cranes standard would have to complete a test that is equivalent to both a written general test and a practical test of the standard crane operator test. OSHA estimated that the written general test would take 1.5 hours to complete, for a total test time of 2.5 hours of

⁷OSHA is not making any determination about whether a specific certification complies with the requirements of the cranes standard. For the purposes of this analysis only, OSHA will treat certificates that do not include a multi-capacity component as not complying with the cranes standard, and certificates that include both a type and multi-capacity component as complying with the cranes standard. For example, during the hearing, a participant indicated that some certifying organizations offer a single “unlimited capacity” certification (Tr. p. 246). In this analysis, OSHA treats such certifications as not complying with the cranes standard.

⁸ One commenter to the PEA objected that: “Costs associated with 1 hour of additional practical testing for operators who are compliant are not necessary” (OSHA-20007-0066-0495). But this comment overlooks that this cost is for an employer to assess an operator with compliant certification under the employer duty clause. The hour taken is an estimate based on the time for a practical test as being a reasonable proxy for this assessment.

testing for each operator (1.5 hours for the written general test and 1.0 hour for the practical test). Finally, operators with no certificate would have to complete a test that is equivalent to the written test on a specific crane type of the standard crane operator test (also lasting 1.5 hours), as well as the written general test and the practical test, for a total test time of 4.0 hours (1.5 hours for the test on a specific crane type, 1.5 hours for the written general test, and 1.0 hour for the practical test).

The wages used for the crane operator and assessor come from the 2010 final cranes rule (75 FR 48102). Accordingly, the operator wage is \$35.62, while the wage of the assessor is estimated to be the same as the wage of a crane inspector, \$41.25. For assessments performed by an employer of a prospective employee (i.e., a candidate), OSHA used these same operator and assessor wages and the above testing times to estimate the cost of assessing prospective employees.

Multiplying the wages of operators, assessors, and candidates by the time taken for each type of assessment provides the cost for each type of assessment. Hence, the cost of assessing an operator already holding a certificate that complies with the standard (both type and capacity) is one hour of both the operator's and assessor's time: \$76.87 ($\$35.62 + \41.25). For an operator with a certificate for crane type only (not crane capacity), the assessment time is 2.5 hours for a cost of \$192.18 ($2.5 \times (\$35.62 + \$41.25)$). Finally, for an operator with no certificate, the assessment time is 4.0 hours for a cost of \$307.48 ($4.0 \times (\$35.62 + \$41.25)$). These estimates are identical to those in the PEA, and commenters did not object to them except for the one comment questioning the inclusion of the assessment costs for operators with compliant certifications, discussed in the above footnote.

Besides these assessment costs, OSHA notes that §1427(k)(2)(ii) requires employers to provide training to employees if they are not already competent to operate their assigned equipment. To determine whether an operator is competent, the employer must

first perform an assessment. Only if an operator fails the assessment will the operator require training. However, in determining this cost, OSHA made a distinction between a nonemployee candidate for an operator position and an operator who is currently an employee. For an employer assessing a nonemployee candidate, OSHA assumed, based on common industry practice, that the employer will not hire a nonemployee candidate who fails the assessment. In the second situation, an employee qualified to operate a crane fails a type and/or capacity assessment for a crane that differs from the crane the employee currently operates. In this situation, the cost-minimizing action for the employer is not to assign the employee to that type and/or capacity crane, thereby avoiding training costs. While the Agency acknowledges that there will be cases in which the employer will provide this training, it believes these costs to be minimal and, therefore, is not taking costs for the training. OSHA made the same determinations in the PEA and did not receive public comment on them.

Number of assessments and number of affected operators. The number of assessments is difficult to estimate due to the heterogeneity of the crane industry. Many operators work continuously for the same employer, already have their assessment, and do not need reassessment, so the number of new assessments required by the cranes standard for these operators will be zero. Some crane companies will rent both a crane and an operator employed by the rental company to perform crane work, in which case the rental crane company is the operator's employer and responsible for operator assessment. In such cases there is no requirement for the contractor who is renting the crane service to conduct an additional operator assessment. Assuming that employers already comply with the assessment and training requirements of the existing §1427(k)(2), employers only need to assess a subset of operators: new hires; employees who will operate equipment that differs by type and/or capacity from the equipment on which they received their

current assessment; and operators who indicate that they no longer possess the required knowledge or skill necessary to operate the equipment.

To calculate the estimated annual number of assessments, OSHA first estimated the current number of crane operators affected by the cranes standard. The FEA in the final cranes standard identified a total of 142,630 affected crane operators (75 FR 48108). However, after publishing the final cranes standard, OSHA made revisions to the cranes standard that reduced the total number of affected operators. In this regard, OSHA excluded a significant percentage of digger-derrick use from the scope of the cranes standard (see *Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks*, 78 FR 32110 (May 29, 2013)). Accordingly, for electric power generation and transmission work covered by the digger-derrick exemption, OSHA found that the two industries using digger derricks have a total of 25,500 operators of digger derricks; these industries are: Electric Power Generation, NAICS: 221110; and Electric Power Transmission, NAICS: 221120 (see 78 FR 32114). Subtracting these digger-derrick operators from the original total leaves the total number of operators affected by this proposal at 117,130 (i.e., 142,630 - 25,500).

For the purpose of determining the number of assessments required each year under this proposal, OSHA is relying on the original 23% turnover rate for operators identified in the 2008 PEA for the cranes rule (73 FR 59895), which includes all types of operators who would require assessment: operators moving between employers; operators moving between different types and/or capacities of equipment; and operators entering the occupation. OSHA estimated that 26,940 assessments occur each year based on turnover (i.e., 117,130 operators x 0.23 turnover rate). This number includes assessments performed by an employer on current employees assigned to a new type and/or capacity crane. In addition, OSHA in the 2008 PEA assumed that 15% of operators involved

in assessments related to turnover would fail the first test administration and need reassessment (73 FR 59895). Therefore, in the PEA for the current rulemaking, OSHA added 4,041 reassessments (i.e., 26,940 operators x 0.15) to the number of reassessments resulting from turnover, for a total of 30,981 yearly assessments resulting from turnover and test failure (i.e., 26,940 + 4,041) (79 FR 7615). OSHA did not receive comment on this estimate, so it is unchanged in this FEA.

Annual assessment costs. Annual assessment costs will vary by year depending on several factors; the following section addresses year-by-year variations. However, OSHA must first determine the annual base amount from which to account for the variations, and must do so for the two scenarios: (1) retaining the original 2014 deadline specified by the existing cranes standard (status quo); and (2) extending the deadline to 2017 (final rule).

The first part of the calculation is the same under both scenarios. Because the annual assessment costs vary by the different levels of assessment required (depending on the operator's existing level of certification), OSHA grouped the 117,130 operators subject to the cranes standard into three classifications: operators with a certificate that complies with the standard; operators with a certificate only for crane type; and operators with no certification. In the PEA, from discussions with members of the crane industry, OSHA estimated that 15,000 crane operators currently have a certificate that complies with the existing cranes standard, and another 60,000 have a certificate for crane type only (but not capacity) (79 FR 7616). Subsequent to the PEA, OSHA has received further information, both from post-PEA public comments and statements made at the public hearing. One certification organization, the National Commission for the Certification of Crane Operators (NCCO), stated that OSHA's estimates "significantly understate the number of crane operators considered by OSHA to be out of compliance," and that "the number of compliant certifications appears

overstated” [ID-0488]. A different certification organization, Crane Institute Certification (CIC), reached the opposite conclusion, stating that the number of operators with compliant certificates “is actually much higher” than OSHA’s estimate of 15,000 [ID-0495]. During the hearing NCCCO stated that “65,000 or more” operators were currently certified under their program [Tr. p. 94], which is by type only [Tr. p. 109]. The International Union of Operating Engineers (IUOE) at the hearing stated that currently it has “just a little over 6,700 operators” certified under its associated OECP program, which does not break out certification by capacity [Tr. p. 246]. OSHA invited each of these three organizations to provide additional information in their post-hearing submissions about the number of operators certified, but none of the organizations provided additional information on this subject or provided additional information challenging OSHA’s underlying estimate that the total number of operators covered by the cranes standard is 117,130.

Based on this record, OSHA estimates that there are 71,700 (65,000 + 6,700) operators with certification for type only, while 15,000 operators have compliant certification.⁹ Therefore, 30,430 crane operators have no crane certification (i.e., 117,130 total operators - (15,000 operators with compliant certification + 71,700 operators with certification for type only)).

Assuming the turnover rate of 23% and the failure rate of 15% for turnover-related assessments are distributed proportionally across the three types of operators, then the number of assessments for operators with compliant certification is 3,968 (i.e., $(0.23 + (0.23 \times 0.15)) \times 15,000$), the number of assessments for operators with type-only certification is 18,965 (i.e., $(0.23 + (0.23 \times 0.15)) \times$

⁹ In light of the disagreement between the commenters about the number of operators with compliant certifications, and no other information in the record, the Agency elected to stay with the original number of 15,000. As a sensitivity analysis check, OSHA redid the analysis with both 10,000 and 20,000 operators with compliant certification. This had a miniscule effect, changing the \$21.7m per year cost savings, at a 7% discount rate, by \$53k per year, either \$53k higher (for 20,000 certified), or \$53k lower (for 10,000 certified.) This is only 0.25% of a change.

71,700), and the number of assessments for operators with no certification is 8,049 (i.e., $(0.23 + (0.23 \times 0.15)) \times 30,430$). Under scenario 2 (employer-assessment requirement extended to 2017), OSHA estimated the CY 2013 costs by multiplying the assessment numbers for each type of operator by the unit costs, resulting in a cost of \$6,424,338 (i.e., $(\$76.87 \times 3,968) + (\$192.18 \times 18,965) + (\$307.48 \times 8,049)$). Under scenario 1, employers would be certifying operators throughout CY 2013, whereas under scenario 2 employers would be deferring the certifications until CY 2016; as a result, the CY 2013 assessment costs for scenario 1 would decrease from \$6,424,338 to \$4,402,920 because a percentage of the operators under scenario 1 will obtain a compliant certificate before they are assessed, thereby reducing the estimated time and cost needed for the assessment (see discussion of year-by-year cost differential in section c below for more details about this determination).

b. Annual certification costs

OSHA estimated the annual certification costs using the three steps used for estimating annual assessment costs: first, determine the unit costs of meeting this requirement; second, determine the number of affected operators; and, finally, multiply the unit costs of meeting the requirement by the number of operators who must meet them. In the PEA, OSHA estimated that almost all certification will occur in the year prior to the deadline, noting that although the November 2014 deadline was roughly a year away, the vast majority of operators had not yet received certification that is in compliance with the existing standard. None of the commenters disagreed. Based upon this evidence, if OSHA extends the existing requirements to November 2017, OSHA estimates that the vast majority of employers will again wait until the year before the deadline (i.e., CY 2016) to certify all operators. As in the annual assessment-cost analysis described above, OSHA provides the calculations for CY 2013 under the original 2014 deadline

(scenario 1), and then presents the certification costs for CY 2016 that would apply if OSHA extends the certification requirement to November 2017 (scenario 2).

Unit certification costs. The unit certification costs are the same as those proposed in the PEA. Unit certification costs vary across the three different types of operators in the operator pool (operators with compliant certification; operators with type-only certification; and operators with no certification). Among operators without certification there is a further distinction with different unit certification costs: experienced operators without certification and operators who have only limited experience. Therefore, there are different unit certification costs for four different types of operators. There also are ongoing certification costs due to the following three conditions: the five-year limit on operator certification; the need for some certified operators to obtain additional certification to operate a crane that differs by type and/or capacity from the crane on which they received their current certification; and a yearly 5% turnover rate (i.e., 5% new crane operators entering the occupation to replace operators leaving the occupation).

OSHA estimated these different unit certification costs using substantially the same unit-cost assumptions used in the FEA for the 2010 cranes standard. In that FEA, OSHA estimated that training and certification costs for an operator with only limited experience would consist of \$1,500 for a 2-day course (including tests) and 18 hours of the operator's time, for a total cost of \$2,141.16 (i.e., $\$1,500 + (18 \text{ hours} \times \$35.62)$) (see 75 FR 48096-48097).¹⁰ OSHA continues to use a cost of \$250 for the tests taken

¹⁰ One commenter in the instant rulemaking stated that the operator certification costs taken in the 2010 FEA were understated, but did not provide any support for an alternative. That commenter mistakenly claimed without citation that OSHA, presumably in the 2010 FEA, "took into consideration that the cost to certify an operator based on the programs available at the time would range from \$500 to \$1600 depending on the test and the training required" but "took the lowest

without any training (a constant fixed fee irrespective of the number of tests (75 FR 48096)), and the same number of hours used for each test that it used in the assessment calculations provided above (which the Agency based on certification test times). Accordingly, OSHA estimated the cost of a certificate compliant with the standard for an operator who has a type-only certificate to be \$339.05 (i.e., 1 type/capacity-specific written test at 1.5 hours and 1 practical test at 1.0 hours (2.5 hours total), plus the fixed \$250 fee for the tests (i.e., (2.5 hours x \$35.62) + \$250)). For an experienced operator with no certificate, the cost is \$392.48 (i.e., the same as the cost for an operator with a type-only certificate plus the cost of an added general written test of 1.5 hours (i.e., (4.0 hours x \$35.62) + \$250)).¹¹

For Scenario 1, §1926.1427(b)(4) specifies that a certificate is valid for five years. OSHA estimates the recertification unit cost would be the same as the assessment for an operator with compliant certification (i.e., \$76.87).

Finally, there will be certified operators who must obtain certification when assigned to a crane that differs by type and/or capacity from the crane on which they received their current certification. This situation requires additional training, but less training than required for a “new” operator with only limited experience. Accordingly, OSHA estimated the cost for these operators as one half of the cost of training and certifying a new operator, or \$1,070.58 (i.e., \$2,141.16 ÷ 2).

Number of certifications. After establishing the unit certification costs, OSHA had to determine how many certifications are necessary to ensure compliance with OSHA’s standard. In doing so, the Agency uses the 5% new-hire estimate from the FEA

cost” of \$500 for its estimate [ID-0475]. In fact, OSHA used \$1,500 as the unit cost for operator certification, both in the 2010 FEA and in the PEA for this rulemaking [75 FR 48097].

¹¹There are no certification costs for operators who already have a certificate that complies with the cranes standard.

discussed above to calculate the number of new operators; therefore, of the 117,130 operators affected by the standard, 5,857 (i.e., $0.05 \times 117,130$) would be new operators who would require two days for training and certification each year. As discussed earlier, OSHA estimated that 71,700 operators have type-only certification, and 15,000 operators have certification that complies with the existing cranes standard. The remaining 24,574 operators (i.e., $117,130 - (71,700 + 15,000 + 5,857)$) are experienced operators without certification.

After all operators attain certification by November 2017, there will still be ongoing certification costs each year. OSHA estimated that 5% of all operators each year, or 5,857 (i.e., $.05 \times 117,130$), are new operators with no experience or certification and, therefore, will need an initial certification. Consequently, with a constant total number of operators, the same number of operators (5,857) will be leaving the profession each year and will not require recertification when their current 5-year certification ends. This leaves 111,274 operators (i.e., $117,130 - 5,857$) who will need such periodic recertification. If we approximate the timing of requirements for recertification as distributed proportionally across years, then 20% of all operators with a 5-year certificate (i.e., 22,255 operators ($.20 \times 111,274$)) would require recertification each year.

A final category of unit certification costs involves the continuing need for certified operators to obtain further certification when assigned to a crane that differs by type and/or capacity from the crane on which they received their current certification. This situation arises for both operators working for a single employer and operators switching employers.

Two commenters pointed to the 2010 FEA and suggested that OSHA had significantly underestimated the number of certifications that most operators would need to obtain to operate cranes of different capacities [ID-0475 and Tr. p. 142] These

commenters do not appear to be aware that under §1926.1427(b)(2), an operator need only obtain a certification for the highest capacity of the type of crane that he or she will operate; there is no requirement to obtain separate certification for lower capacity cranes of the same type. Moreover, the 23% turnover rate (originally from the 2008 cranes PEA) used in this FEA covers not only the pre-deadline situations in which an operator needs an assessment, but also situations in the post-deadline period in which an operator needs multiple certifications. The operators requiring assessments in the pre-deadline period who will not need additional certification in the post-deadline period are operators with certification who move to a new employer and operate a crane with the same type and capacity as the crane on which they received certification from their previous employer. These operators will not need reassessment because of the portability of an operator certificate across employers as specified by the cranes standard (see §1427(b)(3)). For an employer looking to hire an operator for a specific crane, this option will minimize cost, and OSHA assumes employers will choose this option when possible.

After the certification deadline, OSHA estimates that each year 23% of the 117,130 operators (26,940, i.e., $0.23 \times 117,130$) will enter the workforce, change employers, or take on new positions that require one or more additional certifications to operate different types and/or capacities of cranes. Of these 26,940 operators, OSHA estimates that 5% of that turnover, or 5,857 (i.e., $0.05 \times 117,130$), will result from new operators entering the occupation each year; 9%, or 10,542 (i.e., $0.09 \times 117,130$), will result from operators switching employers but operating a crane of the same type and capacity as the crane they operated previously (i.e., no certification needed because certification is portable in this case); and the remaining 9%, or 10,542, changing jobs or positions and

requiring one or more additional certification to operate a crane that differs by type and/or capacity from the crane they operated previously.

Annual certification costs. As with the assessment costs, certification costs will vary by year depending on several factors addressed in the following section. However, OSHA still needs to determine the annual base amount from which to account for the variations, and must do so for the same two scenarios: (1) retaining the original 2014 deadline specified by the existing cranes standard (status quo); and (2) extending the deadline to 2017 (proposed rule).

To estimate the annual base cost for the first scenario, OSHA calculates the certification costs for CY 2013 because that is the remaining period before the original deadline. The total cost for certifying all operators in CY 2013 in accordance with the existing cranes standard using the above unit-cost estimates and numbers of operators is \$46,494,196 (i.e., (71,700 operators with type-only certification x \$339.05) + (24,574 experienced operators without certification x \$392.48) + (5,857 operators with no experience or certification x \$2,141.16)). The Agency, following the FEA (75 FR 48096), annualized this cost for the five-year period during which operator certification remains effective, resulting in an annualized cost of \$8,281,185. In section c below, OSHA uses this amount in calculating the annual certification costs under scenario 1.

To determine the annual amount used in calculations for the second scenario (the extension to 2017), OSHA examines the costs in CY 2016 because that is the first year with certification costs (as noted earlier, OSHA determined that, under the three-year extension, employers will postpone certification costs until CY 2016, so there will not be any new certification costs for CY 2013-2015). Using the same methodology used to calculate the CY 2013 certification costs, the total cost for having all crane operators

certified in CY 2016 is \$47,880,244 (in 2016 dollars). The annualized cost over the five-year period during which certification remains effective is \$8,619,229. In the following section, OSHA uses this amount in calculating the annual certification costs under scenario 2.

c. Year-by-year cost differential for extending the certification deadline to 2017 and preserving the employer assessment duty over that same period

The ultimate goal of this analysis is to determine the annual cost differential between scenario 1 (the status quo) and scenario 2 (the extensions of the certification date and the employer assessment duty), so the final part of this FEA compares the yearly assessment and certification costs employers will incur for the two scenarios. Because the assessment and certification costs change each year under each scenario, OSHA must compare the cost differential in each year separately to determine the annual cost savings for each year attributable to scenario 2. OSHA calculated the present value of each year's differential, which provides a consistent basis for comparing the cost differentials over the extended compliance period. OSHA then annualized the present value of each differential to identify an annual amount that accounts for the discounted costs over this period. Table 1 below summarizes these calculations.

Table 1 shows that assessment and certification costs vary each year under scenario 2. There are several factors that cause these costs to vary: (1) the five-year limit on operator certification causes some operators to require recertification during this period; (2) the need for some certified operators to obtain additional certification to operate a crane that differs by type and/or capacity from the crane on which they received their current certification; and (3) the yearly 5% turnover that results in new crane operators entering

the occupation. In addition, the composition of the operator pool will shift in the year before the deadline because a higher share of all operators will have certification. This shift will decrease the need to perform a longer and more costly assessment, thereby reducing the high costs associated with operators who do not have certification (i.e., employers would take less time assessing operators with compliant certification in this certification year compared to years in which there is no deadline). To account for this effect, OSHA adjusted assessment costs in the year directly preceding the deadline in each scenario (i.e., CY 2013 for scenario 1 and CY 2016 for scenario 2).

Accordingly, OSHA determined that assessment costs for CY 2013 under the first scenario would decrease from \$6,424,338 under scenario 2 to \$4,402,920 under scenario 1 because of the increasing certification effect that occurs near the deadline.¹² A similar calculation for CY 2016 (the year prior to the proposed certification deadline in 2017) lowers the estimated assessment costs from \$6.9 million (in the absence of the deadline and accompanying certification) to \$4.6 million under scenario 2.

One-time costs for certifying operators with non-compliant certification (\$24,309,885) and certifying experienced operators with no certification (\$9,644,607) account for much of the rise in certification costs in CY 2013 under scenario 1. OSHA annualized these one-time operator certification costs across CY 2013-2017 (matching the 5-year duration of the certifications received in the last

¹²OSHA estimates that operators will obtain their compliant certification at a uniform rate throughout the certification year immediately preceding the deadline, which implies that certification costs can be estimated by using a weighted average of the unit costs if no operators become compliant certified, and the unit costs if all operators are so certified, with equal weight attributed to each condition (i.e., each condition (no operators and all operators) contributing one half to the estimate). The Agency then values assessment unit costs as if none of the operators had certification, which would result in maximum assessment times, with unit costs determined by total costs divided by total assessments, which is \$207.36 (i.e., \$6,424,338 total assessment cost ÷ 30,981 total yearly assessments). OSHA next values unit assessment costs as if all operators had compliant certification, which would require the shortest assessment time of 1 hour, and a cost of \$76.87. The ratio of the second unit assessment cost to the first unit assessment cost is .37 (\$76.87 ÷ \$207.36). Therefore, the resulting assessment cost in CY 2013 using the weighted average formula is \$4,402,920 (i.e., $(0.5 \times \$6,424,338) + (0.5 \times 0.37 \text{ cost ratio} \times \$6,424,338)$).

year before the deadline), resulting in an annualized cost of \$8,281,185 for each year of this five-year period under scenario 1.¹³ Under scenario 2, the corresponding annualized certification costs for CY 2016-2020 (again matching the 5-year duration of the certifications received in the last year before the deadline) would be \$8,619,229. The certification costs vary in the other (pre-deadline) years depending on factors identified earlier in this FEA.

As noted earlier, OSHA estimated the overall cost differential between these two scenarios by calculating the difference in total (assessment and certification) costs each year across the two scenarios. The net employer cost savings in current dollars attributable to adopting the second scenario are, for each certification year: 2013, \$18.8 million; 2014, \$27.2 million; 2015, \$27.1 million; 2016, \$8.0 million; 2017, -\$0.3 million; 2018, -\$8.6 million; 2019, -\$8.6 million; and 2020, -\$8.6 million.¹⁴

¹³Under scenario 1, therefore, the total certification costs of \$33,817,340 for each year over CY2014-2017 consist of the annualized cost of \$8,281,185 for the one-time operator certification costs and \$25,536,156 for fixed costs involving recertification of compliant operators, additional certifications for operators changing type or capacity of crane, and certification of new operators.

¹⁴A positive cost differential indicates net savings and a negative cost differential indicates net costs. Savings in earlier years results largely from the extension of the certification deadline. The cost differential then turns negative in later years largely because employers complete certification under the first scenario while they are just beginning certification under the second scenario.

By 2017, under both scenarios all existing operators will have compliant certification. However, under the second scenario, the five-year annualization of when certification costs are incurred would continue until 2020. Hence, 2021 is the first year when, under both scenarios, employer costs would consist solely of ongoing certification costs, and the cost differential between the two scenarios would be zero. The ongoing certification costs consist of: the yearly cost resulting from new operators (5% of all operators) entering the operator pool; the proportion of the pool that must receive recertification each year resulting from expiration of the five-year certification; and the annual additional certifications that occur.

Table 1	Year-by-year cost differential if OSHA extends the certification deadline to 2017								
	2013	2014	2015	2016	2017	2018	2019	2020	2021
Operator Pool									
Scenario 1 (no deadline extension)									
Operators with non-compliant certification	71,700	0	0	0	0	0	0	0	0
Operators with compliant certification	15,000	111,274	111,274	111,274	111,274	111,274	111,274	111,274	111,274
Operators with no certification	24,574	0	0	0	0	0	0	0	0
New operators	5,857	5,857	5,857	5,857	5,857	5,857	5,857	5,857	5,857
Scenario 2 (deadline extension)									
Operators with non-compliant certification	71,700	68,115	64,709	61,474	0	0	0	0	0
Operators with compliant certification	15,000	14,250	13,538	12,861	111,274	111,274	111,274	111,274	111,274
Operators with no certification	24,574	28,909	33,027	36,939	0	0	0	0	0
New operators	5,857	5,857	5,857	5,857	5,857	5,857	5,857	5,857	5,857
Costs									
Scenario 1 (no deadline extension)									
Total assessment costs	4,402,920	0	0	0	0	0	0	0	0

Total certification costs	20,820,888	33,817,340	33,817,340	33,817,340	33,817,340	25,536,156	25,536,156	25,536,156	25,536,156
Total	25,223,808	33,817,340	33,817,340	33,817,340	33,817,340	25,536,156	25,536,156	25,536,156	25,536,156
Scenario 2 (deadline extension)									
Total assessment costs	6,424,338	6,579,422	6,726,751	4,624,107	0	0	0	0	0
Total certification costs	0	0	0	21,158,933	34,155,385	34,155,385	34,155,385	34,155,385	25,536,156
Total	6,424,338	6,579,422	6,726,751	25,783,039	34,155,385	34,155,385	34,155,385	34,155,385	25,536,156
Cost Differential (Scenario 2 - Scenario 1)	(18,799,469)	(27,237,919)	(27,090,590)	(8,034,301)	338,044	8,619,229	8,619,229	8,619,229	0

OSHA next determined the present value of these cost differentials between the two scenarios. OSHA calculated the present value of future costs using two interest rates assumptions, 7% and 3%, which are the rates OSHA used in the FEA of the cranes standard (75 FR 48080), and which follow the OMB guidelines specified by Circular A-4 of September 17, 2003. At an interest rate of 7%, the present value of the cost differentials for CY 2013 onwards results in an estimated savings of \$57.0 million (\$56.0 million using the 3% rate). Finally, annualizing the present value over the three-year extension period results in an annualized cost differential (i.e., net employer cost savings) of \$21.7 million per year (\$19.8 million per year using the 3% rate).

d. Certification of no significant impact on a substantial number of small entities

Because the Agency estimates the cost of any single assessment to be no higher than \$307.48, it believes the economic impact will be minimal on any employer. Most employers will have savings resulting from the three-year extension, particularly employers that planned to pay for operator certification in the year before the original 2014 deadline. The only entities likely to see a net cost will be entities that planned to hire an operator with compliant certification after November 10, 2014. Without the three-year extension, these entities will have no separate assessment duty, but under the three-year extension they will have the expense involved in assessing operator competency. As noted above, however, OSHA estimated the cost for such assessments (for operators with a type and capacity certification) to be \$76.87 per certified operator.

Small businesses will, by definition, have few operators, and OSHA believes the \$76.78 cost will be well below 1% of revenues, and well below 5% of profits, in any industry sector using cranes. OSHA does not consider such small amounts to represent a significant impact on

small businesses in any industry sector. Hence, OSHA certifies this final rule will not have a significant impact on a substantial number of small entities. OSHA made the same certification in the PEA and did not receive any comment on either the certification or its underlying rationale.

B. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (PRA-95) requires Federal agencies to obtain the Office of Management and Budget (OMB) approval of a collection of information (paperwork) requirement before an Agency can conduct or sponsor the paperwork requirement; and to display the OMB control (approval number) (44 U.S.C. 3507(d)). Agencies submit an Information Collection Request (ICR), with paperwork analysis, to OMB seeking approval of their paperwork requirements. The Cranes and Derricks in Construction Standard (29 CFR subpart CC) contains paperwork requirements that have been approved by OMB, ICR titled Cranes and Derricks in Construction Standard (29 CFR part 1926, Subpart CC), under OMB control Number 1218-0261. These paperwork requirements expire on 02/28/2017.

OSHA notes the public need not respond to a collection of information requirement unless the agency displays a currently valid OMB control number, and, notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information requirement if the requirement does not display a currently valid OMB control number.

Also, the PRA-95 (44 U.S.C. 3506(c)(2)), requires agencies to solicit public comments on proposed or revised collection of information requirements; and, requires agencies to submit proposed rules which contain collection of information requirements to OMB for review.

In the February 10, 2014 NPRM, OSHA notified the public that the Agency believed the proposed Cranes and Derricks in Construction: Operator Certification rule did not contain additional collection of information, and that OSHA did not believe it was necessary to submit a new (revised) ICR to OMB. OSHA instructed the public to submit comments on this determination to OMB and encouraged them to submit their comments to OSHA.

OSHA has determined this final rule requires no additional collection of information or any permanent change to the collection program: it preserves the status quo for an additional short period of time. OMB's approval of the Cranes and Derricks in Construction ICR already covers all collections of information required by the temporary extensions in this final rule, and therefore OSHA did not submit a revised ICR to OMB as part of this rulemaking. No parties commented on OSHA's determination that this rule contains no additional paperwork requirements.

C. Federalism

OSHA reviewed this final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Federal agencies must limit any such preemption to the extent possible.

Under Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 et seq.), Congress expressly provides that states and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health

standards. OSHA refers to such states and territories as “State Plan States.” Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. 29 U.S.C. 667. Subject to these requirements, State Plan States are free to develop and enforce under state law their own requirements for safety and health standards.

OSHA previously concluded from its analysis that promulgation of subpart CC complies with Executive Order 13132 (75 FR 48128-29). In states without an OSHA-approved State Plan, this final rule limits state policy options in the same manner as every standard promulgated by OSHA. For State Plan States, Section 18 of the OSH Act, as noted in the previous paragraph, permits State-Plan States to develop and enforce their own cranes standards provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this final rule.

D. State Plan States

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, State Plan States must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, e.g., because an existing state standard covering this area is “at least as effective” as the new Federal standard or amendment (29 CFR 1953.5(a)). The state standard must be at least as effective as the final Federal rule. State Plan States must adopt the Federal standard or complete their own standard within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plan States do not have to amend their standards, although OSHA may encourage them to do so. The 21 states and 1 U.S. territory with OSHA-approved occupational

safety and health plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

When OSHA promulgates a new final rule, states and territories with approved State Plans must adopt comparable amendments to their standards for cranes and derricks within six months of OSHA's promulgation of the final rule unless they demonstrate that such a change is not necessary because their existing standards are already the same, or at least as effective, as OSHA's new final rule.

The amendments to OSHA's cranes standard in this final rule preserve the status quo and do not impose any new requirements on employers. Accordingly, State Plan States would not have to amend their standards to delay the effective date of their operator certification requirements, but they may do so if they so choose. However, if they choose to delay the effective date of their certification requirements, they also would need to include a corresponding extension of the employer duty to assess and train operators that is equivalent to §1427(k)(2).

E. Unfunded Mandates Reform Act

When OSHA issued the final rule for cranes and derricks in construction, it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 et seq.) and Executive Order 13132 (64 FR 43255 (Aug. 10, 1999)). OSHA concluded that the final rule did not meet the definition of a "Federal intergovernmental mandate" under the UMRA because OSHA standards do not apply to state or local governments except in states that voluntarily adopt State Plans. OSHA further noted that the rule imposed costs of over \$100 million per year

on the private sector and, therefore, required review under the UMRA for those costs, but that its final economic analysis met that requirement.

As discussed above in Section III.A (Final Economic Analysis and Regulatory Flexibility Analysis) of this preamble, this final rule does not impose any costs on private-sector employers beyond those costs already taken into account in the 2010 final rule for cranes and derricks in construction. Because OSHA reviewed the total costs of the 2010 final rule under the UMRA, no further review of those costs is necessary. Therefore, for the purposes of the UMRA, OSHA certifies that this final rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than \$100 million in any year.

F. Consultation and Coordination with Indian Tribal Governments

OSHA reviewed this final rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it does not have “tribal implications” as defined in that order. The rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

G. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) is “to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources.” 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard “which requires conditions, or the adoption or use of one or more practices, means, methods, operations,

or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment.” 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk. See Industrial Union Department, AFL-CIO v. American Petroleum Institute, 448 U.S. 607 (1980). In the cranes rulemaking, OSHA made such a determination with respect to the use of cranes and derricks in construction (75 FR 47913, 47920-21). This final rule does not impose any new requirements on employers. Therefore, this final rule does not require an additional significant risk finding (see Edison Electric Institute v. OSHA, 849 F.2d 611, 620 (D.C. Cir. 1988)).

In addition to materially reducing a significant risk, a safety standard must be technologically feasible. See UAW v. OSHA, 37 F.3d 665, 668 (D.C. Cir. 1994). A standard is technologically feasible when the protective measures it requires already exist, when available technology can bring the protective measures into existence, or when that technology is reasonably likely to develop (see American Textile Mfrs. Institute v. OSHA, 452 U.S. 490, 513 (1981); American Iron and Steel Institute v. OSHA, 939 F.2d 975, 980 (D.C. Cir. 1991)). In the 2010 Final Economic Analysis for the cranes standard, OSHA found the standard to be technologically feasible (75 FR 48079). This final rule is, therefore, technologically feasible as well because it does not require employers to implement any additional protective measures; it simply extends the duration of existing requirements.

List of Subjects in 29 CFR Part 1926

Construction industry, Cranes, Derricks, Occupational safety and health, Safety.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, authorized the preparation of this document. OSHA is issuing this rule under the following authorities: 29 U.S.C. 653, 655, 657; 40 U.S.C. 3701 et seq.; 5 U.S.C. 553; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012); and 29 CFR part 1911.

Signed at Washington, DC, on September 19, 2014.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated in the preamble of this final rule, OSHA amends 29 CFR part 1926 as follows:

PART 1926—[AMENDED]

Subpart CC—Cranes and Derricks in Construction

1. The authority citation for subpart CC of 29 CFR part 1926 continues to read as follows:

AUTHORITY: 40 U.S.C. 3701 et seq.; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 5-2007 (72 FR 31159) or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

2. Amend §1926.1427 by revising paragraph (k) to read as follows:

§1926.1427 Operator qualification and certification.

* * * * *

(k) Phase-in. (1) The provisions of this section became applicable on November 8, 2010, except for paragraphs (a)(2) and (f), which are applicable November 10, 2017.

(2) When §1926.1427(a)(1) is not applicable, all of the requirements in paragraphs (k)(2)(i) and (ii) of this section apply until November 10, 2017.

(i) The employer must ensure that operators of equipment covered by this standard are competent to operate the equipment safely.

(ii) When an employee assigned to operate machinery does not have the required knowledge or ability to operate the equipment safely, the employer must train that employee prior to operating the equipment. The employer must ensure that each operator is evaluated to confirm that he/she understands the information provided in the training.

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